

June 26, 2008

2008 Legislative Amendments to the Indiana Code Relating to Pawnbrokers Effective July 1, 2008

Questions, Answers, and Administrative Interpretations

1. Have the criteria changed for granting a pawnbroker license?

Answer – Effective July 1, 2008, the Department will determine the financial responsibility, character, and fitness of not only the applicant but also the following persons or entities associated with the applicant:

- (a) any significant affiliate of the applicant;
- (b) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant; and
- (c) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant. [IC 28-7-5-8]

2. What is evidence of compliance with the financial responsibility, character and fitness requirements of an applicant or one of the individuals described to in Item 1, above?

Answer – In addition to other background checks considered necessary by the Director, each of the individuals described in Item 1, above, will have their credit histories reviewed and officers will be required to undergo a national criminal history background check (as defined in IC 10-13-3-12) maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification. [IC 28-7-5-4]

3. Do fingerprints have to be submitted for any individuals described in Item 1?

Answer – Yes, officers described in Item 1, above, will be required to submit fingerprints to the Department for processing by the Indiana State Police Department. The individuals submitting their fingerprints are responsible to pay any fees or costs associated with preparing the fingerprints and obtaining the criminal background check. [IC 28-7-5-4] More information on the fingerprinting process will be available on the DFI website.

4. How do I obtain a national criminal background check and what does it cost?

Answer – The Indiana State Police Department is working with the DFI and other agencies to establish a system that will allow national criminal history background checks to be performed electronically by the State Police, thereby eliminating the need to submit fingerprints on paper forms. Until such a system is operational (expected in January 2009), officers described in Item 2, above, must obtain a fingerprint card and instructions from the DFI, and be fingerprinted by

their local law enforcement authority. The fingerprint card will then be submitted to the DFI by the law enforcement agency, and forwarded by the DFI to the State Police.

5. What changes have been made to the recordkeeping provisions for pawnbrokers?

Answer – New § 30.5 has been added to IC 28-1-2 addressing recordkeeping security issues. These recordkeeping requirements apply to the following individuals and entities:

- (a) depository and non-depository financial institutions under Title 28,
- (b) consumer creditor licensees and registrants under the UCCC,
- (c) rent to own companies under IC 24-7 and
- (d) other persons subject to the regulation of the Department under Title 28, including pawnbrokers.

The provisions define such terms as “personal information” (i.e. names, addresses, social security numbers, credit card numbers, etc.) and “personal records” (i.e. any paper or electronic records with unencrypted, unredacted personal information of customers or potential customers). The security provisions require that personal records be reasonably safeguarded from destruction, theft or other loss and protected from misuse. If a breach of the security of any personal records occurs, the person maintaining the records is subject to the disclosure requirements under IC 24-4.9-3 (law requiring database owners to disclose security breaches, unless the person is exempt from the disclosure requirements under IC 24-4.9-3-4 (i.e. the database owner is subject to other information security laws). [IC 28-7-5-4]

6. What obligations are being imposed upon pawnbrokers who cease engaging in the pawnbroking business in Indiana?

Answer – As of July 1, 2008, the liquidation provisions of the pawnbroker law establishes a procedure for liquidating a pawnbroker, including oversight of the liquidation by the Department and, in the Director’s discretion, the appointment of a liquidating agent. [IC 28-7-5-10.1]

7. What are the civil penalty provisions available to the DFI for violations of the pawnbroker law?

Answer – If the DFI determines, after notice and opportunity for hearing, that a person has violated the law governing pawnbrokers, the DFI may, in addition to or instead of all other remedies available under the pawnbroker law, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation. [IC 28-7-5-38.1]

8. Can information required to be maintained under New § 30.5 be released to other supervisory agencies?

Answer – Yes, the law has been amended to provide that the Director may provide for the release of information to representatives of state, federal, or foreign financial institution or money services business supervisory agencies. [IC 28-7-5-39]